In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 1095

ROBERT QUAGLIATO AND VICTOR ANDREW QUALIATO, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. Appendix A) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on March 23, 1965. The petition for a writ of certiorari was filed on April 22, 1965. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the evidence was sufficient to support petitioners' conviction.

772-977—65

STATEMENT

Petitioners Quagliato and Qualiato and co-defendant Ippolito were charged in an indictment returned in the United States District Court for the Northern District of Illinois with possession of certain goods of a value in excess of $100, knowing them to have been stolen from a motor truck while being shipped in interstate commerce, in violation of 18 U.S.C. 659 (R. 3). Ippolito pleaded guilty. After the jury had found both petitioners guilty, sentences of imprisonment were imposed upon Quagliato for two years and upon Qualiato for one year (R. 15–17, 60–61). On appeal (R. 17–19) the convictions were affirmed.

Evidence adduced at the trial showed that a tractor-trailer containing an interstate shipment of merchandise valued at about $25,000, shipped "piggy back" via the Pennsylvania Railroad, was missed, after August 20, 1963 (R. 42–43; Gov. Ex. 1), from the Soo Line Railroad at Schiller Park, Illinois (R. 20–22).

On August 26, 1963, at about 6:35 a.m., F.B.I. agents were conducting a surveillance of a tractor-trailer driven by Ippolito in the vicinity of 39th and Normal in Chicago, Illinois (R. 23, 27–29, 35, 38, 40–41). The agents saw a Pontiac, driven by Qualiato, with Quagliato as a passenger, drive to the side of the trailer after petitioners motioned to Ippolito. In the extensive surveillance which followed, the Pontiac sometimes followed the trailer, but at other times went ahead of it on a devious route through the city (R. 23–25, 27–29, 35–36). When the trailer parked at Fulton and Racine and Ippolito

alighted, the agents apprehended him (R. 25–26, 30). Petitioners, when they saw this, ran down an alley, but were arrested by an agent shortly thereafter (R. 30). The Pontiac was registered in Ippolito's name (R. 45–46). An inventory of the items in the trailer showed that most of them came from the stolen shipment (R. 43–45).

Petitioners were taken to the F.B.I office at about 7:40 a.m. (R. 30). Qualiato, after being advised that he did not have to make a statement, told an agent that on the preceding Thursday an unidentified telephone caller had requested his assistance in unloading some merchandise; he was to be paid $300 for two hours' work. He said that $300 for two hours' work meant it was "a hot load" (R. 31–32). The court instructed the jury that Qualiato's statement was admissible only against him, and not against Robert Quagliato (R. 30–31).

Robert Quagliato, after being advised of his rights, told an agent that when he and his brother were arrested they were going to get a bus to go to work, and that he had not seen Ippolito either on August 25 or 26 (R. 37–38). He took the stand at the trial and denied telling an agent after his arrest that he had not seen Ippolito on August 25 or August 26 (R. 57). He testified that he knew Ippolito but did not know that the goods on the trailer had been stolen (R. 51). He admitted that he and his brother, in Ippolito's borrowed car, followed Ippolito's trailer around the city, but said that the arrangement was that after Ippolito had dropped the trailer off he

would drive the two petitioners to work in his car (R. 51–53).

ARGUMENT

The jury could reasonably infer from the government's evidence that petitioners had associated themselves with the illegal venture, and participated in it as aiders and abettors. *Nye & Nissen v. United States,* 336 U.S. 613; *Pereira* v. *United States,* 347 U.S. 1. There was much more than mere suspicion and presence at the scene of a crime. The jury could infer that petitioners, in Ippolito's car, were acting as an escort and look-out for the truck in its devious route through the city.[1] This was assistance in possessing the merchandise. Their act in fleeing when Ippolito was apprehended tended to show guilty knowledge. This was reinforced by Quagliato's original denial that he had seen Ippolito and by his explanation on the stand—one which the jury could find incredible. Qualiato of course admitted that he knew the goods were stolen.

[1] Petitioners' suggestion (Pet. 3) that testimony by government agents as to the route of the tractor-trailer was an "overdramatization" prejudicing their right to a fair trial is frivolous.

CONCLUSION

For the reasons stated it is respectfully submitted that the petition for a writ of certiorari should be denied.

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